

Remarks

This Amendment is in response to the Office Action dated **October 5, 2007**.

Claims 2, 4, 6 and 7 have been amended so that they have proper antecedent basis.

Support for the amendment to claim 2 is found on page 2, lines 28-30. No new matter has been added.

Rejections

35 U.S.C. §102(b)

Claims 1-14, 17-48 and 51 have been rejected under 35 U.S.C. §102(b) as being anticipated by Kletschlka (US 6,443,926). It is asserted in the Office Action that

Kletschlka discloses an expandable balloon (38) having torque in the unexpanded states and three or more wings (Figures 7 and 7A) mounted on the inner shaft of a catheter assembly, the inner shaft (44) having a torque in the unexpanded state (Figure 10); a stent (column 8, lines 1-4); and another shaft (34) to which the inner shaft is tacked.

Office Action, page 2, item 1.

Applicant disagrees that Kletschlka discloses an expandable balloon having a torque. It is actually the particle trap disclosed by Kletschlka, used in combination with a balloon (see claims 1 and 2, for example), that may be understood as having a torque in the unexpanded state, and not the balloon. Kletschlka fails to disclose a balloon having a torque. In fact, one could interpret the disclosure of Kletschlka to disclose that the balloon catheter not have a torque. For example, see the description for Figures 16-19 and 27, wherein it appears that Kletschlka is specifically illustrating how to avoid rotation of the balloon catheter itself.

However, for purposes of expediting prosecution, Applicant has amended independent claims 1, 22 and 33, each to incorporate the limitation that the balloon is mounted to

an inner shaft, the inner shaft having a torque in the first unexpanded state. Support for this amendment can be found at least from claim 4 as originally filed, and from the Summary of the Invention, page 2, lines 24-34 and page 3, lines 1-2. Claim 4 has been amended accordingly. Claims 3 and 34 have been canceled and these limitations also added to independent claims 1 and 33. Claim 35 has been amended to depend from claim 33 rather than canceled claim 34. No new matter has been added.

This limitation is clearly distinguishes Applicant's independent claims 1, 22 and 33 over Kletschlka.

Applicant submits that Kletschlka discloses an angioplasty device comprising a catheter for insertion into a vessel-like structure and a trap operably connected to the catheter and to a rotatable member. Rotating the rotatable member relative to the catheter actuates the trap. See Abstract.

Kletschlka discloses with respect to FIGS. 7A and 7B, that "[r]otating the guidewire 44 relative to the catheter 48 will cause the struts 49 of the trap 38 to move between the helically twisted (or "braided") position shown in FIG. 7A and the arcuately expanded position shown in FIG. 7B...Continued rotation of the guidewire 44 will continue to draw the struts radially inward until they lie adjacent to the inner wall 48 of the catheter 26." Column 9, lines 51-63.

There is nothing in the disclosure of Kletschlka that suggests that the rotatable member already has a torque prior to rotation of the guidewire relative to the catheter which presumably occurs during use (see paragraph above), and not prior to. See, for example, Summary of the Invention of the present specification.

Consequently, independent claims 1, 22 and 33, as amended, are not anticipated by

Kletschlka. Anticipation under 35 U.S.C. §102(b) requires that each and every element of the claimed invention be disclosed in a single prior art reference and that such elements are arranged as in the claim. See *Verdegaal Bros., Inc. v. Union Oil Co.*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). See also MPEP 2131.

Claims 2, 4, 5-14 and 17-21 depend from claim 1 and are not anticipated by Kletschlka for at least the reasons that claim 1 is not anticipated by Kletschlka.

Claims 23-32 depend from claim 22 and are not anticipated by Kletschlka for at least the reasons that claim 22 is not anticipated by Kletschlka.

Claims 35-48 and 51 depend from claim 33 and are not anticipated by Kletschlka for at least the reasons that claim 33 is not anticipated by Kletschlka.

A new claim 52 has been added that recites specific balloon structures, namely, distal cone and waist portions that are not found in the trap structure disclosed by Kletschlka because the trap has a membrane with an open distal end for trapping particles. See, for example, column 6, lines 36-44 and column 9, lines 19-31.

Applicant respectfully requests withdrawal of the rejection of claims 1-14, 17-48 and 51 under 35 U.S.C. §102(b) as anticipated by Kletschlka, US 6,443,926.

35 U.S.C. §103(a)

Claims 15-17, 49 and 50 have been rejected under 35 U.S.C. §103(a) as being unpatentable over Kletschlka in view of Kletschlka. It is asserted in the Office Action that:

Kletschlka discloses the claimed invention except for the balloon member comprising a member selected from the group consisting of various copolymers...At the time the invention was made, it would have been an obvious matter of design choice to a person of ordinary skill in the art to make the balloon

member out of one of the various copolymers because Applicant has not disclosed that any particular copolymer provides an advantage.

Office Action, pages 2-3, item 2.

Independent claims 1 and 33, as amended, have been discussed above.

Kletschlka fails to disclose a balloon member having a torque in a first unexpanded state and a second unexpanded state that is mounted on an inner shaft wherein the inner shaft has a torque in the first unexpanded state of the balloon member, nor is it obvious from the disclosure of Kletschlka to apply a torque so that the inner shaft has the torque when the balloon member is in its first unexpanded state.

Claims 15-17 depend from claim 1 and are not obvious over Kletschlka for at least the reasons that claim 1 is not obvious over Kletschlka.

Claims 49 and 50 depend from claim 33 and are not obvious over Kletschlka for at least the reasons that claim 33 is not obvious over Kletschlka.

Applicant respectfully requests withdrawal of the rejection of claims 15-17, 49 and 50 under 35 U.S.C. §103(a) as being unpatentable over Kletschlka in view of Kletschlka.

CONCLUSION

Claims 1, 2, 4-33, and 35-52 are pending in the application. Applicant has addressed all of the issues presented in the Office Action. Based on the foregoing, Applicant respectfully requests reconsideration and an early allowance of the claims as presented. Should any issues remain, the attorney of record may be reached at (952)563-3011 to expedite prosecution of this application.

Respectfully submitted,

VIDAS, ARRETT & STEINKRAUS

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By: /Lisa Ryan-Lindquist/
Lisa R. Lindquist
Registration No.: 43071

6640 Shady Oak Dr., Suite 400
Eden Prairie, MN 55344-7834
Telephone: (952) 563-3000
Facsimile: (952) 563-3001